IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5730 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5730 of 1990

MR DIPAK RAVAL for MR MR ANAND for Petitioner No. 1

MS MITA PANCHAL A.G.P. for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 26/11/2004

ORAL JUDGEMENT

1. The petitioner then an Office Superintendent under the Registrar, Co-operative Societies has

challenged the seniority assigned to him in the cadre of senior clerk and consequently in the cadres of head clerk and Office Superintendent and claims promotion to Gujarat State Co-operation Service Class-II. Pending this petition, the petitioner has, on reaching the age of superannuation, retired from service on 30th November, 1996.

2. The petitioner entered the service of the State Government as junior clerk on 15th July, 1959. He came to be promoted to the next higher post of senior clerk on 20th July, 1971. For further promotion to the post of head clerk, the petitioner was required to pass the departmental examination known as Government Diploma in Co-operation & Accountancy [G.D.C & A.]. The petitioner became eligible to take the said departmental examination on 20th July, 1974. He passed the said G.D.C. & A examination in the month of December, 1977. The petitioner thus having become eligible for further promotion was promoted as head clerk on 23rd February, 1978 and was further promoted to the post of Office Superintendent in the year 1984. Latter he was given deemed date of promotion as Office Superintendent as of 30th July, 1982.

3. It is the claim of the petitioner that under the relevant Regulations, the petitioner was required to pass the said G.D.C. & A. examination within three years and three chances from the date he became eligible to appear at the examination. The petitioner would become eligible to take the said G.D.C. & A. examination on completion of three years' service as senior clerk. Hence, the petitioner became eligible to appear at the examination on 20th July, 1974. He was required to pass the said G.D.C. & A. examination within three chances and three years from the said date i.e. by 20th July, 1977. The petitioner failed at the first two chances availed of by him. The second of the said two examination was held in the month of January, 1977. The result thereof, was declared on 21st July, 1977. The next examination was held in the month of November, 1977 and the result thereof, was declared on 21st December, 1977 where the petitioner was declared to have passed the said G.D.C. & A. examination. According to the petitioner after the month of January, 1977, the next examination was required to be held within six months. As no examination was held within six months or until the month of November, 1977, the petitioner could not pass the said G.D.C. & A. examination by 20th July, 1977. He has relied upon the second proviso to Regulation 13 (4) (iii) of the examination Regulations. He has claimed that by virtue

of the said proviso, in such eventuality, the period for passing examination shall stand extended. The petitioner, therefore, can be said to have passed the said G.D.C. & A. examination within the prescribed three years and three chances. The petitioner, therefore, shall not lose seniority over the senior clerks who may have passed the said G.D.C. & A. examination earlier to the petitioner. If the petitioner were assigned seniority accordingly, he would have been promoted to the posts of head clerk and Office Superintendent earlier and would be considered for further promotion in Class-II service in the year 1989 or thereabout.

4. Mr. Raval has relied upon Regulation 13 (2) (iii). He has submitted that the said Regulation provides that the chances utilized shall be taken into account. In the submission of Mr. Raval only those trials where the petitioner did attempt can be considered for computing the trials availed of by the petitioner. He has submitted that the petitioner was entitled to extension of time beyond the period of three years under second proviso to Regulation 13 (4) (iii). If the petitioner were given the benefit of the aforesaid two provisos, the petitioner would have been treated to have passed the said G.D.C. & A. examination within prescribed three chances within three years. In that case, the petitioner would have retained his seniority vis-a-vis other senior clerks and would have been promoted to the posts of head clerk and Office Superintendent and consequently to Class-II service much earlier. The petitioner is, therefore, entitled to the benefit of deemed promotion to the posts of head clerk and Office Superintendent in Class-III service and to Class-II service.

5. I am unable to agree with Mr. Raval. It may first be noted that the petitioner has produced Government Resolution dated 14th September, 1967 by which amendment was made to the then prevailing Regulations including Regulation No. 13. Neither the petitioner nor the respondent State has produced the entire set of Rules/Regulations as was prevalent at the relevant time. Regulation No.13 (2) provides for passing of the said G.D.C. & A. examination by an Officer who was eligible for promotion during the period from 10th May, 1965, till the date of the said order i.e. 14th September, 1967. Regulation 13 (2) (iii) relied upon by Mr. Raval provides, inter alia, that :

"The chances utilized by them shall however, be

taken into account".

6. The petitioner was promoted as senior clerk in the year 1971 i.e. he was not eligible for promotion during the period from 10th May, 1965 to 14th September, 1967. The said Regulation 13(2), therefore, shall not apply to the case of the petitioner. Even otherwise, what is provided in clause (iii) thereof is that the chances utilized by such officer prior to the date of the said Resolution shall be counted i.e. in the event an officer had already availed of a chance to pass the said G.D.C. & A. examination prior to 14th September, 1967 under the prevalent Regulations, the same shall be counted. The meaning attributed by Mr. Raval that only those trials shall be counted which are availed of by the officer cannot be accepted. Reliance on second proviso to Regulation 13 (4) (iii) is equally misconceived. The said proviso reads as under :-

"Provided further that the period of passing the examination may be extended, except in the case of direct their probationary period upto, the date of next examination in the case of third chance, if last examination was held in more than six months the expiry of the period prescribed."

6. An officer can avail of the benefit of the extension of the period of passing the examination as contemplated in the aforesaid proviso provided the third examination he is due to avail of is not held within six months from the preceding examination. As the facts disclose, the petitioner cannot be said to have passed the said G.D.C.& A. examination within three chances. The petitioner, therefore, cannot claim the period of extension of passing the examination as contemplated by the said proviso.

7. The petition is contested by the State. In the counter affidavit it is stated that after having become eligible to appear at the said G.D.C. & A. examination, the petitioner was offered four chances within three years to appear and pass the said G.D.C. & A. examination. The petitioner however, did not avail of the first two chances at the examination held in the months of January, 1975 and November, 1975 and at the next two examinations held in the months of July, 1976 and January, 1977 the petitioner failed. The petitioner, therefore, cannot be said to have passed the said G.D.C. & A. examination within three trials, nor can it be said that the examination at which the petitioner had the

third chance was not held within six months from the next preceding examination so as to enable the petitioner the benefit of extension of the period of passing the examination. Thus, the petitioner cannot be said to have passed the said G.D.C. & A. examination within specified three chances or within three years. The petitioner's claim to seniority therefore, requires to be rejected.

8. The petition deserves to be dismissed also on the grounds of delay, laches and acquiescence. After his passing the said G.D.C. & A. examination the petitioner was promoted as head clerk in the month of February, 1978 and as Office Superintendent in the year 1984. The present petition filed in the year 1989, 12 years after the petitioner passed the said G.D.C. & A. examination and after having earned two promotions, is grossly belated and requires to be rejected on that ground also.

In view of the above discussion, the petition is dismissed. Rule is discharged. Interim relief is vacated. There shall be no order as to cost.

[Miss R.M. Doshit, J.]

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